IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE, AT BOMBAY

CIVIL APPLICATION NO.**3830 OF 2006**
IN
CIVIL APPLICATION NO.**1391 OF 2006**
IN
FIRST APPEAL NO.**512 OF 2006**
IN
SUIT NO. **2592 OF 2002**

Mrs. Pallavi Chandavarkar ... **Applicant (Orig. Applicant/ Orig. Appellant)**

Versus

(1) Shri Mohan Anand Chandavarkar
(2) Mrs. Sandhya Mohan Chandavarkar
(3) Shri Nandan Mohan Chandavarkar ... **Respondents**

(No.1 and 2 – Orig.Plaintiff and No.3-Orig.DefendantNo.3)

Mr. A.V. Anturkar with Mr. S.B. Deshmukh Advocates for Applicant
Mr. D.P. Madan with Mr. A.S. Naik Advocates for Respondent Nos.1 and 2

CORAM : S.R.SATHE,J.
DATED : 08th September,2006

P.C.:-

1. Heard both the learned Advocates.

2. Perused the papers including the affidavit filed by the Respondent.

3. It is an admitted fact that by virtue of order dated 16/08/2006, the applicant-appellant was directed to file undertaking in the form of affidavit by 21/08/2006. However, she did not file the same accordingly in time.

4. By virtue of this application, the applicant has submitted that when her Advocate took the noting of the order, he noted the date 31/08/2006 instead of 21/08/2006 for filing undertaking. She has therefore prayed that delay caused in filing the undertaking be condoned and the undertaking filed on 29/08/2006 be accepted.

5. The learned advocate for the Respondent submitted that the applicant has in fact obtained the order prior to 21/08/2006 and she could have filed undertaking on 21/08/2006. If the reasons mentioned by the applicant in her application for not filing the undertaking in time is to be accepted then it will have to be presumed that after the copy of the order was obtained by the applicant it was not read by the concerned.

6. Keeping in mind the facts and circumstances and

the object with which order dated 16/08/2006 was passed, in the interest of justice the delay caused in filing undertaking is condoned because admittedly no change has taken place in respect of the suit premises even after 21/08/2006 till today. Hence the undertaking filed on 29/08/2006 is accepted and it is held that condition No.1 of the order dated 16/08/2006 is fulfilled so far as the filing of undertaking is concerned.

7. Mr. A.V. Anturkar, learned Advocate for the Applicant also submitted that he has given praecipe for speaking to minutes as condition No.6 mentioned in the order is typed twice and as such the condition No.7 which is shown in the order is to be deleted. It appears that through clerical mistake, condition No.6 has been typed twice. Hence subsequent condition shown as condition No.7 is deleted. Office is directed to carry out the necessary corrections in the said order and give certified copy of the of the same to both the parties.

8. The learned advocate for the Applicant submits that it is necessary to seek some clarification with regard to the word “outgoings” mentioned in the order.

The learned advocate for the Respondent submits that such clarification can not be sought under 'Speaking to Minutes'. The learned Advocate for the Applicant thereupon submits that for seeking clarification, he may file regular application before the appropriate bench. Hence, the applicant is at liberty to move such application before appropriate bench.

9. The learned advocate for the applicant submits that he has already produced on record necessary compilation and given copy of the same to the other side and as such there is no need to file separate paper book as the compilation produced is containing all that is necessary for the paper book. He fairly submits that even then, if, the other side feels that any particular document/documents are not filed by the applicant then the respondent may give notice accordingly and the applicant shall file copy of the said document. In view of this, the compilation filed by the applicant on record be treated as paper book.

10. The undertaking given in the form of affidavit be kept in the record of the first appeal.

11. The Civil Application No.3830/2006 is disposed of.

(S.R. SATHE,J.)